

**Congress of the United States**  
**Washington, DC 20515**

May 21, 2019

The Honorable Mitch McConnell  
Senate Majority Leader  
S-230, U.S. Capitol  
Washington, D.C. 20510

The Honorable Charles Schumer  
Senate Minority Leader  
S-221, U.S. Capitol  
Washington, D.C. 20510

Dear Leader McConnell and Leader Schumer:

We, the undersigned members of the House of Representatives committed to equality for members of the lesbian, gay, bisexual, and transgender (LGBT) community, urge you to oppose the nomination of Howard C. Nielson, Jr. to serve as a United States District Judge for the District of Utah.

A fair and impartial judiciary is foundational to the success and stability of our democracy. It is critical that federal judges embody these principles, and demonstrate a commitment to protecting *all* Americans' constitutional freedoms. Mr. Nielson has a consistent record not just of opposing LGBT equality in court, but of making offensive and unfounded arguments in the course of those proceedings. That record raises serious questions about his ability to impartially administer justice.

In 2010, a federal district court judge ruled Proposition 8—California's same-sex marriage ban—unconstitutional. The following year, Mr. Nielson moved to vacate that judgment because the judge was involved in a same-sex relationship and had not disclosed his "marriage intentions."<sup>i</sup> Mr. Nielson wrote, "Given that Chief Judge Walker was in a committed, long-term, same-sex relationship throughout this case (and for many years before the case commenced), it is clear that his 'impartiality might reasonably [have been] questioned' from the outset"; the judge's choice not to recuse himself, Mr. Nielson continued, created an "appearance of judicial partiality" that "threaten[ed] deep and lasting harm to the public's confidence in our nation's judicial system."<sup>ii</sup> The notion that fundamental elements of an individual's identity somehow create intrinsic conflicts of interest is both baseless and deeply offensive. Those who make such accusations do not belong on our courts.

As part of the team that sought to defend Proposition 8 in court, Mr. Nielson did not merely attack the presiding judge; he also made arguments that rejected science and denied the human

costs of discrimination. As one court reporter put it, Mr. Nielson argued “that research is muddled on the true nature of homosexuality” in order to “undercut [an expert’s] assertion that homosexuality is an inherent characteristic of gays and lesbians, not a social choice.”<sup>iii</sup> According to the same reporter, Mr. Nielson also challenged an expert’s contention that “studies ... show that gays and lesbians encounter a disproportionate level of stress and mental health difficulties because of discrimination,” insisting “that the research is hopelessly flawed.”<sup>iv</sup> In reality, there is significant consensus on both counts, contradicting what Mr. Nielson contended. According to American Psychological Association, “most people experience little or no sense of choice about their sexual orientation”;<sup>v</sup> according to the National Alliance on Mental Illness, “LGBTQ individuals are almost 3 times more likely than others to experience a mental health condition such as major depression or generalized anxiety disorder” due in part to discrimination.<sup>vi</sup>

With hate crimes on the rise<sup>vii</sup> and important protections under assault,<sup>viii</sup> members of the LGBT community are relying on the courts to uphold their constitutional rights. Mr. Nielson’s record raises serious concerns about his ability to be a neutral arbiter of the law in these cases; his own choices and statements have made him unfit for confirmation to the U.S. District Court for the District of Utah. Accordingly, we urge you to reject his nomination.

Sincerely,



A. Donald McEachin  
Member of Congress

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<sup>i</sup> Defendant-Intervenors’ Motion to Vacate Judgement, *Perry v. Hollingsworth*, 704 F.Supp.2d 921 (N.D. Cal. 2010), <https://www.afj.org/wp-content/uploads/2017/12/Perry-v.-Hollingsworth-motion-to-vacate.pdf>

<sup>ii</sup> Ibid

<sup>iii</sup> Howard Mintz, “Prop. 8 trial Day 9: Live coverage from the courtroom.” *The Mercury News* (Jan. 22, 2010), <https://www.mercurynews.com/2010/01/22/prop-8-trial-day-9-live-coverage-from-the-courtroom/>

<sup>iv</sup> Ibid

<sup>v</sup> American Psychological Association, “Answers to your questions: For a better understanding of sexual orientation and homosexuality.” (2008), [www.apa.org/topics/orientation.pdf](http://www.apa.org/topics/orientation.pdf).

<sup>vi</sup> “NAMI.” NAMI: National Alliance on Mental Illness, [www.nami.org/Find-Support/LGBTQ](http://www.nami.org/Find-Support/LGBTQ).

<sup>vii</sup> Devlin Barrett, et al., “Pittsburgh Shooting Comes amid Rise in Hate Crimes, Growing Anxiety about Right-Wing Extremism.” *The Washington Post* (Oct. 28, 2018), [www.washingtonpost.com/world/national-security/pittsburgh-shooting-comes-amid-rise-in-hate-crimes-growing-anxiety-about-right-wing-extremism/2018/10/28/a4f9fe3c-dade-11e8-b732-3c72cbf131f2\\_story.html?utm\\_term=.ea23dde72235](http://www.washingtonpost.com/world/national-security/pittsburgh-shooting-comes-amid-rise-in-hate-crimes-growing-anxiety-about-right-wing-extremism/2018/10/28/a4f9fe3c-dade-11e8-b732-3c72cbf131f2_story.html?utm_term=.ea23dde72235).

<sup>viii</sup> E.g., Kalhan Rosenblatt, “Trump Administration Considering Narrowing Definition of Gender.” *NBC News* (Oct. 21, 2018), [www.nbcnews.com/feature/nbc-out/trump-administration-considering-narrowing-definition-gender-n922591](http://www.nbcnews.com/feature/nbc-out/trump-administration-considering-narrowing-definition-gender-n922591)





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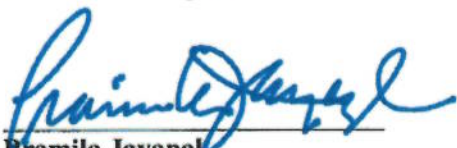
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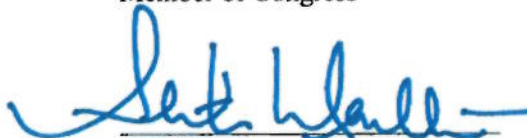
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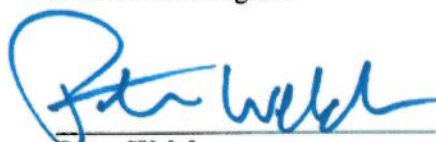
  
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